



MINUTES OF THE GREENSBORO BOARD OF ADJUSTMENT OCTOBER 26, 2009

A regular meeting of the Greensboro Board of Adjustment was held on Monday, October 26, 2009 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Rick Pinto, Chair, Scott Brewington, Clinton Turner, Kelly Trexler, Brian Pearce, and Cheryl Huffman. Staff present were: Loray Averett, Zoning Services Coordinator and Rawls Howard, Zoning Administrator, as well as Jim Clark, City Attorney's Office.

Chair Pinto called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Mr. Brewington moved to approve the minutes of the September 28, 2009 meeting as amended, seconded by Ms. Trexler. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Rawls Howard and Loray Averett were sworn in for their testimony related to matters listed on the agenda.

CONTINUANCES/WITHDRAWALS

No one appearing before the Board asked to be granted a continuance.

NEW BUSINESS

VARIANCE

- (a) BOA-09-40: **105 SUNSET DRIVE** Robert and Debra Vetter requests a variance from the requirement that utilities to detached accessory buildings be provided by branching service from the principal building. *Variance:* The applicant is proposing to have a separate electrical meter for an existing detached accessory building. Section 30-4-8.5(A), Present Zoning-RS-12, BS-28, Cross Street-North Elm Street.
(GRANTED)

Rawls Howard stated that the applicant is requesting a variance from the requirement that utilities to detached accessory buildings be provided by branching services from the principal building. The applicant is proposing to locate a separate electrical meter on their detached accessory garage/pool-house building. The property is located on the south side of Sunset Drive west of North Elm Street on zoning map block sheet 28 and is zoned RS-12 (Residential Single Family-12). The property contains a dwelling, a recently constructed detached accessory use garage/pool-house along with an in-ground swimming pool. The detached building contains approximately 1,600 square feet. In May 2009, the applicant applied for and received a building permit to construct the new detached building. The applicant has mentioned that there was an existing detached building that was removed, prior to the recent construction of the new building, and that it had a separate electrical meter. The lot is approximately 1.62 acres which is 70,567 square feet in size. The lot is 5 times larger than the minimum zoning district requirement which is 12,000 square feet per lot. The distance from the house to the new building is approximately 65 feet. The applicant's survey shows that the lot is developed with existing detailed hardscapes, existing infrastructure, and landscaping. The existing pool pump and electrical equipment are located adjacent to the side western lot line. The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density on RS-12 will typically be 3.0 units per acre or less.

Chair Pinto asked for anyone wishing to speak in favor of the request.

Charlie Melvin, 300 N. Greene Street, attorney representing the applicant, presented the Board with a handout covering the property and proposed electrical meter. He stated that the previously existing attached structure was served by underground utilities with a separate electrical meter. The applicant replaced the existing detached structure with a new structure. The new structure was constructed with the intent to have separate meters without the knowledge the ordinance had changed. Attachment to the primary structure would cause substantial harm to established vegetation and hardscapes. The electrical supply at the primary residence would also need to be increased to handle the buildings needs, which have always previously been met with a separate electrical supply. There can be no reasonable use of this property by requiring a separate meter because it would have to have two separate 150-foot disruption of existing vegetation and hardscape. This is a unique circumstance based on the fact that the lot is approximately five times larger than the minimum RS-12. If the variance is granted nothing more needs to be done other than the installation of the meter. The hardship results from the application of this new ordinance to a situation that has been in place for many years. The contractor stated that if he had been informed of the changes in the beginning, the planned construction could have been adapted. The hardship is not the result of the applicants' own action, but rather from the changes to the ordinance. It is in the general harmony and purpose of the ordinance, which is to serve utilities in a safe and reasonable manner. This variance would ensure the public safety and welfare by providing electrical service to the new structure. It also avoids disturbance to the existing landscape.

No one spoke in opposition to the request.

Chair Pinto asked when the ordinance was changed, and the purpose of the change. Ms. Averett stated the ordinance was changed in July of 1992. Mr. Howard stated that it is a first step in providing a building for rent with separate utilities, for what is otherwise a single family lot. The existing meter was grandfathered in based on the change in ordinance. Once the existing meter was demolished, anything constructed would need to conform to the existing ordinance.

Mr. Pearce asked if Duke Energy removed the lines when the meter was removed.

Debbie Vetter, 105 Sunset Drive, stated that the lines remained in place.

Ms. Averett stated that before a power meter can be brought back by the utility it must be approved by the inspector. The inspector will not approve a detached meter until approved by the Zoning Officer.

Mr. Brewington asked staff to clarify the relation to ordinances limiting addition of rental property on single-family lots. Ms. Averett stated that if the property owner wants to turn it into a detached dwelling unit that is a permitted use. There are criteria that must be met for that use, and this building does meet all of those criteria. Mr. Brewington stated that if the intent of the ordinance was to mitigate the addition of rental dwellings, but this property can provide that by right, the issue of the meter is a moot point.

After a short discussion, Mr. Brewington moved that the facts as submitted by the zoning administrator be incorporated into record by reference, and that the zoning enforcement officer be overruled and the variance granted based upon the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, they can make no reasonable use of their property because given the nature of the property; the rather large lot, the amount of terrain to be covered for a connection, the extensive renovation that would have to take place to the primary residence to comply; it would be very difficult and financially burdensome to comply. The hardship, of which the applicant complains, results from unique circumstances of the property because, as has been presented, this property has previously been grandfathered into the new ordinance, as a result of that the ordinance was not instigated by the applicant, and also given the large nature of the lot, creates circumstances which are difficult. The hardship results from the application of this ordinance to the property because, as previously submitted, during the process it did not come to light until after construction, the rewiring of this would be financially burdensome, and it cause substantial disruption to the existing landscape. The variance is in harmony with the general purpose and intent of the ordinance, and preserves its spirit, because this would be in harmony with the original look of the property, in keeping with the overall feel of the neighborhood, it would be less disruptive for both the applicant and the neighborhood. The granting of the variance assures the public safety and welfare, and does substantial justice because of the existing electrical lines and would complete what has already been constructed.

Mr. Pearce made a friendly amendment to strike any reference to the financial burden, and state there is no reasonable use due to the existing structures wiring, landscaping, hardscapes, and other issues of the like on the property.

Ms. Huffman seconded the motion, as amended. The Board voted in favor of the motion 5-1. (Ayes: Brewington, Huffman, Pearce, Pinto, Trexler. Nays: Turner.)

Chair Pinto commented that the Board may hear evidence about financial burdens and hardships, but that cannot be a basis of the decision. He also stated that it is his opinion, as Chair, that it is the role of other members to make motions, however, there is no rules limiting his ability to do so, and will if necessary.

- (b) BOA-09-41: **4506 FOXCROFT ROAD** Janet Johnson requests a variance from a rear setback requirement. *Variance:* A proposed covered patio will encroach 5 feet into a minimum 30-foot rear setback. Table 30-4-6-1, Present Zoning-RS-12, BS-79, Cross Street-Starmount Drive. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance to cover an existing patio. The existing patio is not required to meet the rear setback requirement; however, the structure that is proposed to cover the patio must meet minimum setbacks. The covered patio structure is proposed to encroach 5 feet into a 30-foot rear setback. The property is located on the north side of Foxcroft Road west of Starmount Drive on zoning map block sheet 79. The applicant had a variance request heard at the August 24, 2009 meeting for a proposed covered patio to encroach 9 feet into a 30-foot rear setback. A copy of those minutes is included in each member's packet. The applicant has reduced the encroachment request from 9 feet to 5 feet. The applicant is proposing to construct a covered structure over a portion of the existing patio, which is located at the rear of the house. The covered structure will encroach 5 feet into a 30-foot rear setback. The covered patio is proposed to cover only a portion of the patio which will be 20 feet x 12 feet. The previous request was to cover 20 feet by 16 feet. The covered portion will be 25 feet from the rear property line instead of the required 30 feet. Only the northeastern corner will encroach into the setback. The northwestern corner will be 35 feet from the rear property line. A 5-foot section of the patio width will encroach and the other 15 feet meets the minimum rear setback. The proposed covered patio area will contain 240 square feet of which 25 square feet will encroach into the rear setback. Tax records indicate the original house was built in 1959. The rear lot line runs at a severe angle creating a unique shaped lot. The applicant's survey shows a wooden privacy fence is located along the rear lot line. Copies of previous request for building permits relative to this structure are included in the packet information. The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-12 will typically be 3.0 units per acre or less.

Chair Pinto asked for anyone wishing to speak in favor of the request.

Janet Johnson, 4506 Foxcroft Road, stated that she is proposing to construct a 21 ft. by 12 ft. roof over an existing patio. She requests a variance to build an adequate roof over the patio. A roof is necessary because the patio is unusable during hot weather, due to lack of shade. She feels a permanent structure would be more in keeping with the house and neighborhood. The shaded patio will also be useful for protection of pets, and any future residents of the

property. She presented handouts to the Board showing pictures of the proposed construction site. There was a tree that provided shade to the patio, but it had to be removed based on the recommendation of experts. These concerns represent hardships because it is reasonable for a property owner to have a level of comfort on their property. The hardship of complying with the ordinance is due to the lot's unusual shape. If the ordinance is applied the patio roof could only extend 7 ft., and would cover less than half of the patio. If granted, the encroachment would not have any negative impact on neighbors. Those neighbors able to see the proposed roof have submitted letters of support.

Chair Pinto stated that the applicant made a very similar request a couple of months ago, and asked if the only thing that had changed was the distance of the encroachment. Ms. Johnson stated that the only difference was the amount of the encroachment. However, there was an additional letter of support submitted by a neighbor, and the only shade-bearing tree needed to be removed.

Ms. Huffman asked if there was a home owners association. Ms. Johnson stated that there was not. Ms. Huffman cited a presented affidavit that stated that the roots of the previously existing tree were a threat to the foundation of the home, as new evidence. She asked if it was the roots or disease in the tree that caused her to remove it. Ms. Johnson stated that both were reasons for the tree's removal. Ms. Huffman asked if the applicant plans on screening in the porch at a later time. Ms. Johnson stated that she did not.

Ms. Huffman asked why this was not classified as a rehearing. Mr. Howard stated that if an applicant enters a new application with any change in encroachment it calls for a new hearing.

Shirley Rothrock, 4919 Starmount Drive, and Lorie Funderberk, 4921 Starmount Drive, stated that they were neighbors of the applicant. They are an interested party, and did not receive a copy of the packet that was presented to the Board. They stated that they were not in opposition of the request, but wanted more information about it. Given the information of the hearing they support the request.

No one spoke in opposition of the request.

Mr. Pearce stated that the Board has established a precedent that relief from the sun was not a reason for a variance. Ms. Huffman stated that the reason it was denied before was based on the need to remove the tree. Chair Pinto stated that the difference may be that the tree needed to be removed, possibly changing the reasonable use of the property. Also, the reduction in encroachment is substantial. Mr. Brewington stated that the unique shape of the property creates an infringement that is only a 5-foot section.

After a short discussion, Chair Pinto moved that the facts as submitted by the zoning administrator be incorporated into record by reference, and that the zoning enforcement officer be overruled and the variance granted based upon the following. There are practical difficulties or unnecessary hardships that result from the carrying out the strict letter of this ordinance. If the applicant complies with the provisions of the ordinance, she can make no reasonable use of her property for the following reasons: An integral use of this property was

use of the back patio. For years, the back patio was shaded by a large tree. That tree, as a result of disease and root damage, had to be taken down. With the tree removed, the back patio was no longer adequately shaded, thereby making it useless to the property owners. The property owners have reduced the original request for the length of the encroachment for the roof over the back patio from 9 ft. to 5 ft., and that, in conjunction with the shape of the lot, the violation is minimal. The hardship from which the applicant complains is a result of the unique circumstances related to this property. Both the tree factors and the angle of the lot refer to this. The hardship results from the application of this ordinance to the property for the same reasons, and the hardship is not the result of the applicant's own actions. The variance is in harmony with the general purpose and intent of the ordinance, and preserves its spirit. The granting of the variance assures the public safety and welfare, and does substantial justice. All of the surrounding neighbors are all in favor of the request. The motion was seconded by Ms. Trexler. The Board voted in favor of the motion 4-2. (Ayes: Pinto, Trexler, Turner, Brewington. Nays: Pearce, Huffman)

OTHER BUSINESS:

Mr. Howard presented a copy of the back signature page of the rules, as a result of the rules and procedure change from last meeting. Mr. Howard asked the Board to replace the rules with the new document.

ABSENCES:

The absence of Mr. Parmele, Mr. Strickland, and Mr. Snell were acknowledged.

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ADJOURN:

There being no further business before the Board, the meeting adjourned at 6:50 p.m.

Respectfully submitted,

Rick Pinto, Chair
Greensboro Board of Adjustment

RP/jd